

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY R. TAYLOR, JR.,	§
	§ No. 51, 2009
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 83003848DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 10, 2009

Decided: August 7, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 7th day of August 2009, upon consideration of the briefs on appeal and the record below,¹ it appears to the Court that:

(1) The defendant-appellant, Henry R. Taylor, Jr., filed an appeal from the Superior Court’s January 5, 2009 order denying his motion to correct an illegal sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In June 1983, Taylor was indicted on two counts of Burglary in the Second Degree, one count of Felony Theft, and one count of

¹ The Court also has considered the appellant’s “motion for permissive writing,” which was filed on July 13, 2009.

Misdemeanor Theft. On October 25, 1983, Taylor pleaded guilty to a single count of Burglary in the Second Degree. The remainder of the charges were dismissed. Taylor was sentenced to 1 year of Level V incarceration, to be suspended for 1 year of probation. Taylor subsequently violated his probation and was sentenced to 6 months of Level V incarceration.

(3) In July 1989, Taylor again was indicted on a charge of Burglary in the Second Degree. He was found guilty of that charge by a Superior Court jury. Taylor subsequently was sentenced as a habitual offender.² One of the charges upon which the State based its motion to have Taylor declared a habitual offender was his 1983 second degree burglary conviction. His current claim of an illegal sentence under Rule 35(a) is grounded in his contention that his 1983 guilty plea was invalid because of discrepancies in the indictment.

(4) In this appeal, Taylor claims that a) there was insufficient support presented by the State for his habitual offender status; b) he was deprived of his right to notice and a hearing regarding his habitual offender status; and c) his counsel provided ineffective assistance with respect to his habitual offender status.

² Del. Code Ann. titl 11, § 4214(b).

(5) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-authorized limits or violates double jeopardy.³ A sentence also is illegal when it is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.⁴ The narrow function of Rule 35(a) is to correct an illegal sentence, not to re-examine alleged errors occurring prior to the imposition of sentence.⁵

(6) Because Taylor alleges error only with respect to the habitual offender proceedings, which occurred prior to the imposition of sentence, he is not entitled to relief under Rule 35(a).⁶ Moreover, Taylor’s claim, which is, in essence, a claim that his sentence was imposed in an illegal manner, is time-barred under Rule 35(b).⁷ Even if viewed on the merits, Taylor has presented inadequate factual support for his claim that his 1983 second degree burglary conviction was invalid and, therefore, could not properly serve as a predicate felony in support of his later sentencing as a habitual

³ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁴ *Id.*

⁵ *Id.*

⁶ *Smith v. State*, Del. Supr., No. 181, 2009, Jacobs, J. (June 19, 2009).

⁷ *Id.*

offender. For all of the above reasons, we conclude that Taylor's claims are without merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice